

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CHRISTOPHER SAUR,

Plaintiff,

**5:11-cv-1440
(GLS)**

v.

MICHAEL J. ASTRUE,
The Commissioner of Social
Security,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

McMahon, Kublick Law Firm
500 South Salina Street
Suite 816
Syracuse, NY 13202

JAN S. KUBLICK, ESQ.

FOR THE DEFENDANT:

HON. RICHARD S. HARTUNIAN
United States Attorney
100 South Clinton Street
Syracuse, NY 13261

BENIL ABRAHAM
Special Assistant U.S. Attorney

Steven P. Conte
Regional Chief Counsel
Social Security Administration
Office of General Counsel, Region II
26 Federal Plaza, Room 3904
New York, NY 10278

Gary L. Sharpe
Chief Judge

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff Christopher Saur challenges the Commissioner of Social Security's denial of his claim for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI), seeking judicial review under 42 U.S.C. §§ 405(g) and 1383(c)(3). (See Compl., Dkt. No. 1.) After reviewing the administrative record and carefully considering Saur's arguments, the court affirms the Commissioner's decision and dismisses the Complaint.

II. Background

On December 9, 2009, Saur filed applications for DIB and SSI under the Social Security Act ("the Act"), alleging disability since July 6, 2008. (See Tr.¹ at 58-59, 127-32.)² After his applications were denied, (see *id.* at 62-73), Saur requested a hearing before an Administrative Law Judge (ALJ), which was held on March 31, 2011. (See *id.* at 27-57, 74-75.) On June 14, 2011, the ALJ issued an unfavorable decision denying the

¹ Page references preceded by "Tr." are to the Administrative Transcript. (See Dkt. No. 7.)

² Saur subsequently amended his alleged onset date to July 31, 2008. (See Tr. at 30.)

requested benefits, which became the Commissioner's final determination upon the Social Security Administration Appeals Council's denial of review. (See *id.* at 1-6, 9-25.)

Saur commenced the present action by filing his Complaint on December 9, 2011 wherein he sought review of the Commissioner's determination. (See *generally* Compl.) The Commissioner filed an answer and a certified copy of the administrative transcript. (See Dkt. Nos. 6, 7.) Each party, seeking judgment on the pleadings, filed a brief. (See Dkt. Nos. 10, 12.)

III. Contentions

Saur contends that the Commissioner's decision is tainted by the application of improper legal standards and is not supported by substantial evidence. (See Dkt. No.10 at 5-12.) Specifically, Saur claims that: (1) the ALJ erred by relying solely on the medical-vocational guidelines and not introducing the testimony of a vocational expert (VE); (2) the ALJ failed to follow the treating physician rule; (3) substantial evidence does not support the ALJ's decision; and (4) the ALJ improperly considered his subjective complaints of pain. (See *id.*) The Commissioner counters that the appropriate legal standards were used and substantial evidence supports

the ALJ's decision. (See Dkt. No. 12 at 5-15.)

IV. Facts

The court adopts the parties' undisputed factual recitations. (See Dkt. No. 10 at 1; Dkt. No. 12 at 1.)

V. Standard of Review

The standard for reviewing the Commissioner's final decision under 42 U.S.C. § 405(g)³ is well established and will not be repeated here. For a full discussion of the standard and the five-step process by which the Commissioner evaluates whether a claimant is disabled under the Act, the court refers the parties to its previous decision in *Christiana v. Comm'r of Soc. Sec. Admin.*, No. 1:05-CV-932, 2008 WL 759076, at *1-2 (N.D.N.Y. Mar. 19, 2008).

VI. Discussion

A. Nonexertional impairments

First, Saur contends that the ALJ did not properly consider his “nonexertional impairment—namely, an adjustment disorder.” (Dkt. No. 10 at 5-6.) According to Saur, the ALJ was required to consult with a VE to

³ Review under 42 U.S.C. §§ 405(g) and 1383(c)(3) is identical. As such, parallel citations to the Regulations governing SSI are omitted.

determine whether he could perform other work, because “uncontradicted testimony indicates” that he suffers from such a disorder. (*Id.* at 5.) The court disagrees with Saur.

The appropriateness of applying “the grid guidelines and the necessity for expert testimony must be determined on a case-by-case basis.” *Bapp v. Bowen*, 802 F.2d 601, 605 (2d Cir. 1986). Indeed, the ALJ is vested with discretion regarding whether to use a vocational expert. See 20 C.F.R. § 404.1566(e). But “if a claimant’s nonexertional impairments ‘significantly limit the range of work permitted by his exertional limitations’ then the grids obviously will not accurately determine disability status because they fail to take into account claimant’s nonexertional impairments” and, accordingly, the ALJ should consult with a VE before making a determination as to disability. *Bapp*, 802 F.2d at 605 (quoting *Blacknall v. Heckler*, 721 F.2d 1179, 1181 (9th Cir. 1983)).

Competitive, remunerative work generally requires the mental ability to: “understand, carry out, and remember instructions; use judgment in making work-related decisions; respond appropriately to supervision, co-workers and work situations; and deal with changes in a routine work setting.” SSR 96-8p, 61 Fed. Reg. 34,474, 34,477 (July 2, 1996); see SSR

96-9p, 61 Fed. Reg. 34,478, 34,483 (July 2, 1996); SSR 85-15, 1985 WL 56857, at *4 (1985). Thus, “[a] substantial loss of ability to meet any of these basic work-related activities would severely limit the potential occupational base.” SSR 85-15, 1985 WL 56857, at *4.

Here, contrary to his contentions, Saur’s ability to meet the demands of unskilled work are demonstrated by ample evidence in the record. (See Dkt. No. 10 at 5.) Specifically, Saur was examined by Dr. Dennis Noia who diagnosed him with adjustment disorder with mixed features and opiate abuse, in early full remission. (See Tr. at 458.) Based on this examination, Dr. Noia reported that Saur “appears to be having some difficulty dealing with stress,” but was capable of understanding simple directions, performing simple and some complex tasks, sustaining attention and concentration, attending to a routine and maintaining a schedule, making appropriate decisions, and relating to and interacting with others. (*Id.*) In addition, state agency review psychologist A. Hochberg opined that Saur “retains the capacity for the performance of unskilled work” including the ability to understand, remember, and carry out simple instructions, respond to changes in the workplace, make simple work related decisions and respond appropriately to supervisors and coworkers. (*Id.* at 732.) Thus,

the ALJ's determination that Saur's ability to perform the demands of work was not limited by his adjustment disorder is supported by substantial evidence.⁴ (See Tr. at 17.) Accordingly, the ALJ appropriately relied on the grid guidelines to determine the existence of other jobs in the national economy which Saur could perform. See *Bapp*, 802 F.2d at 605 ("If the guidelines adequately reflect a claimant's condition, then their use to determine disability status is appropriate.").

B. Residual Functional Capacity

Saur next argues that the ALJ erred in weighing his treating physician's opinion and, thus, the ALJ's determination that he can perform light work is unsupported by substantial evidence. (See Dkt. No. 10 at 7-11.) The Commissioner responds, and the court agrees, that the residual functional capacity (RFC) finding is supported by substantial evidence and was arrived at by properly applying the relevant legal principles. (See Dkt. No. 12 at 7-11.)

A claimant's RFC "is the most [he] can still do despite [his]

⁴ "Substantial evidence is defined as more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept to support a conclusion." *Alston v. Sullivan*, 904 F.2d 122, 126 (2d Cir. 1990) (internal quotation marks and citations omitted).

limitations.” 20 C.F.R. § 404.1545(a)(1). In assessing a claimant’s RFC, an ALJ must consider “all of the relevant medical and other evidence,” including a claimant’s subjective complaints of pain. *Id.* § 404.1545(a)(3). An ALJ’s RFC determination must be supported by substantial evidence in the record. See *Frye ex rel. A.O. v. Astrue*, No. 11-1585-cv, 2012 WL 2125910, at *2 (2d. Cir. June 13, 2012). If it is, that determination is conclusive and must be affirmed upon judicial review. See *id.*; see also *Perez v. Chater*, 77 F.3d 41, 46 (2d Cir. 1996).

In this case, Dr. Stephen Robinson completed a medical source statement form and opined that, due to “chronic low back pain,” Saur could occasionally lift ten pounds, frequently lift less than ten pounds, and, in an eight-hour workday, stand and/or walk for less than two hours and sit for less than six hours. (Tr. at 765-66.) Dr. Robinson further opined that Saur was limited in his ability to push and/or pull in both his upper and lower extremities and could occasionally climb stairs, but never balance, kneel, crouch, crawl, or stoop. (See *id.* at 766.) Finally, Dr. Robinson reported that Saur was limited in his ability to reach and handle and suffered from environmental limitations including temperature extremes, vibration, humidity/wetness, hazards, and fumes, odors, chemicals, and gases. (See

id. at 767-68.) The ALJ afforded Dr. Robinson's opinion little weight due to his limited treatment relationship with Saur⁵ and because his exam notes did not support his restrictive opinion. (See *id.* at 19.) Based on the other evidence of record, including the opinions of treating physician Dr. Jeffery Kahn and consultative examiner Dr. Kalyani Ganesh, the ALJ determined that Saur retained the RFC to perform the full range of light work.⁶ (See *id.* at 17-18.)

Medical opinions, regardless of the source, are evaluated by considering several factors outlined in 20 C.F.R. § 404.1527(c). Controlling weight will be given to a treating physician's opinion that is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence." *Id.*

⁵ The ALJ erroneously stated that Dr. Robinson had only treated Saur on two occasions, one of which was for the purpose of having him complete the Medical Source Statement. (See Tr. at 19.) The record reflects that Dr. Robinson examined Saur on three occasions, once each in January and February 2010, and again in January 2011 when Saur presented the Medical Source Statement form for Dr. Robinson to complete. (See *id.* at 769-74, 777-79.)

⁶ "Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds." 20 C.F.R. § 404.1567(b). In addition, "the full range of light work requires standing or walking, off and on, for a total of approximately [six] hours of an [eight]-hour workday." SSR 83-10, 1983 WL 31251, at *5-6 (1983)

§ 404.1527(c)(2); see *Halloran v. Barnhart*, 362 F.3d 28, 32 (2d Cir. 2004). Unless controlling weight is given to a treating source's opinion, the ALJ is required to consider the following factors in determining the weight assigned to a medical opinion: whether or not the source examined the claimant; the existence, length and nature of a treatment relationship; the frequency of examination; evidentiary support offered; consistency with the record as a whole; and specialization of the examiner. See 20 C.F.R. § 404.1527(c).

Here, because Dr. Robinson's opinion is inconsistent with other substantial evidence in the record, the ALJ properly discounted it. See *Halloran*, 362 F.3d at 32. Further, the ALJ considered the relevant factors and properly explained her reasoning for the weight given to Dr. Robinson's opinion. See 20 C.F.R. § 404.1527(c). Specifically, in November 2008, Dr. N. Rehmatullah examined Saur for worker's compensation purposes and opined that he could "do modified work where he can sit and stand at his convenience with limited bending and lifting" of not more than twenty pounds. (Tr. at 781.) Dr. Rehmatullah's examination revealed that Saur could walk on his heels and toes, squat and rise, stand erect and walk without a limp. (See *id.* at 784.) Further, Saur's range of

motion in his hips and knees was normal and neurologically he was intact in his lower extremities. (See *id.*) Finally, he had a “mild limitation of motion” in his lumbar spine. (*Id.*) The record also contains treatment notes from Dr. Kahn representing six examinations from August 2008 through January 2009. (See *id.* at 301-12.) Dr. Kahn referred Saur for a functional capacity evaluation (FCE) which was conducted in December 2008. (See *id.* at 297-300.) The results of the FCE indicated that Saur could work at a Sedentary-Light physical demand level, which was defined as requiring predominately sitting and standing and the ability to exert a force of fifteen pounds occasionally, seven pounds frequently, and less than five pounds on a constant basis. (See *id.* at 298.) The test revealed that Saur’s acceptable leg lift capability was thirty pounds, his twelve inch lift capability was thirty pounds, his shoulder lift capability was twenty pounds, overhead lift capability was ten pounds, carrying ability for thirty feet was fifteen pounds, and pushing and pulling ability for thirty feet was seventy-five pounds. (See *id.* at 297.)

Finally, Dr. Ganesh examined Saur in March 2010 and opined that he suffered a moderate limitation in lifting, carrying, pushing, and pulling, but no gross limitation to sitting, standing, or walking. (See *id.* at 461.) Dr.

Ganesh noted that Saur was in no acute distress, his gait and stance were normal, he could walk on his heels and toes without difficulty, change for the exam and get on and off the exam table without assistance, and rise from a chair without difficulty. (See *id.* at 460.) Dr. Ganesh also found that Saur had full range of motion in his shoulders, elbows, forearms, and wrists bilaterally as well as in his hips, knees, and ankles. (See *id.* at 461.) Saur had full range of motion in his cervical spine, but a reduced range of motion in his lumbar spine. (See *id.*) Straight leg raising was negative and his neurological examination was normal. (See *id.*)

In sum, the ALJ's RFC assessment is affirmed because she applied the appropriate legal standards in considering the medical opinions and arrived at an RFC that is supported by substantial evidence.

C. Credibility Determination

Next, Saur contends that the ALJ did not properly consider his pain. (See Dkt. No. 10 at 12.) The Commissioner counters that the ALJ's credibility finding was legally sound and is supported by substantial evidence. (See Dkt. No. 12 at 11-13.) The court agrees with the Commissioner in this regard as well.

An ALJ must consider a claimant's subjective complaints of

limitations resulting from his impairments, including those from pain, in gauging his RFC. See 20 C.F.R. § 404.1545(a)(3). However, “[a]n individual’s statement as to pain or other symptoms shall not alone be conclusive evidence of disability.” 42 U.S.C. § 423(d)(5)(A). The Commissioner is obligated to evaluate all of a claimant’s symptoms, “including pain, and the extent to which [those] symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence.” 20 C.F.R. § 404.1529(a).

Ultimately, “[t]he reasons for the credibility finding must be grounded in the evidence and articulated in the determination or decision.” SSR 96-7p, 61 Fed. Reg. at 34,485-86. Thus, “after weighing the objective medical evidence in the record, the claimant’s demeanor, and other indicia of credibility,” an ALJ may reject the claimant’s subjective allegations regarding pain as long as she sets forth her “reasons with sufficient specificity to enable [the court] to decide whether the determination is supported by substantial evidence.” *Lewis v. Apfel*, 62 F. Supp. 2d 648, 651 (N.D.N.Y. 1999) (internal quotation marks and citation omitted).

Here the ALJ’s credibility determination—that Saur’s statements concerning the intensity, persistence, and limiting effects of his symptoms

were only partially credible—is supported by substantial evidence in the record. (See Tr. at 19.) The ALJ made this determination after considering the objective medical evidence, opinion evidence, and Saur’s testimony with respect to his symptoms, treatments, and activities of daily living. (See *id.* at 14-19.) Although Saur testified that he can barely keep up with his household chores, lays down for hours during the day, can only cook things that are easy to make because of his inability to stand for long periods, and wants to work but feels that he would be unreliable due to his back pain, (see *id.* at 46-49, 51, 54), in a confidential health assessment completed by Saur in July 2010 he reported having no difficulty walking, standing, or sitting and only some difficulty climbing stairs and carrying, (see *id.* at 792). He further reported that he could work full time despite his impairments. (See *id.* at 793.) Ultimately, Saur’s subjective claims are not wholly credible, and, in finding as such, the ALJ properly weighed “the objective medical evidence in the record, [Saur’s] demeanor, and other indicia of credibility.” *Lewis*, 62 F. Supp. 2d at 651 (internal quotation marks and citation omitted). Thus, the ALJ’s credibility assessment is conclusive.

D. Remaining Findings and Conclusions

After careful review of the record, the court affirms the remainder of the ALJ's decision as it is supported by substantial evidence.

VII. Conclusion

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that the decision of the Commissioner is **AFFIRMED** and Saur's Complaint (Dkt. No. 1) is **DISMISSED**; and it is further

ORDERED that the Clerk close this case and provide a copy of this Memorandum-Decision and Order to the parties.

IT IS SO ORDERED.

February 13, 2013
Albany, New York


Gary L. Sharpe
Chief Judge
U.S. District Court